

**Plaintiffs' Memorandum in Opposition
to Joint Motion for Summary
Judgment for Failure to Prove Fault
Element of Public Nuisance Claims**

Ex 15 – Hilliard Tr. Excerpts

10 Thursday, January 10, 2019

HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
CONFIDENTIALITY REVIEW

16 Videotaped Deposition of GARY HILLIARD,
17 held at Winstead PC, 2728 N. Harwood St.,
18 Dallas, Texas, commencing at 9:06 a.m. on the
19 above date, before Susan Perry Miller,
 Registered Diplomate Reporter, Certified
 Realtime Reporter, Certified Realtime
 Captioner, and Notary Public.

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<p style="text-align: right;">Page 14</p> <p>1 P R O C E E D I N G S 2 GARY HILLIARD, 3 having taken an oath to tell the truth, the 4 whole truth, and nothing but the truth, 5 testified as follows: 6 EXAMINATION 7 QUESTIONS BY MR. BOGLE: 8 Q. Good morning. 9 A. Good morning. 10 Q. Can I get your full name, 11 please? 12 A. Gary Lawrence Hilliard. 13 Q. And, Mr. Hilliard, my name is 14 Brandon Bogle. I'm going to be asking you 15 some questions today. Before we get into the 16 substance, though, have you ever had your 17 deposition taken before? 18 A. I have not. 19 Q. Okay. Just a few ground rules 20 to hopefully make things go as smoothly as 21 possible for us. I'm going to ask questions 22 and I'd ask that you wait till I finish my 23 question before you provide an answer, number 24 one, to make sure you understand my question; 25 number two, to allow the court reporter to</p>	<p style="text-align: right;">Page 16</p> <p>1 of what you do at Tech Data. What is your 2 job? 3 A. I'm a dangerous goods safety 4 advisor, so my role is to manage hazardous 5 materials for our company in the United 6 States, Canada and Mexico. 7 Q. Okay. Does Tech Data in any 8 way, shape or form sell, distribute or deal 9 in opioids? 10 A. No. It's all electronics. 11 Q. All electronics, okay. 12 When did you start working for 13 Tech Data? 14 A. In September 2016. 15 Q. Okay. And prior to working at 16 Tech Data, were you employed at McKesson? 17 A. I was. 18 Q. Okay. Can you give me the span 19 of time that you worked for McKesson? 20 A. From 1997 till 2016. 21 Q. Okay. And why did you leave 22 McKesson? 23 A. I was part of a workforce 24 reduction. 25 Q. Okay. Were you given the</p>
<p style="text-align: right;">Page 15</p> <p>1 more easily transcribe things. 2 Does that make sense? 3 A. Yes, it does. 4 Q. Okay. And if at any point in 5 time you want to take a break, just let me or 6 your counsel know. I'm happy to do that. 7 It's not an endurance contest. 8 The other thing is if I ask a 9 question that you don't hear or don't 10 understand, please ask me to repeat it or 11 rephrase it and I will do so. Otherwise, I 12 assume if you're answering my question that 13 you understood it. Is that fair? 14 A. Yes. 15 Q. Okay. Where are you currently 16 employed, sir? 17 A. Tech Data Corporation. 18 Q. Where is that located? 19 A. The corporate office is in 20 Clearwater, Florida. 21 Q. Okay. Are you out of 22 Clearwater or somewhere else? 23 A. I'm out of a Fort Worth 24 facility. 25 Q. Give me just a general sketch</p>	<p style="text-align: right;">Page 17</p> <p>1 opportunity to transfer to another department 2 or just outright told that they were 3 eliminating your position and there was no 4 other position for you? 5 A. Outright elimination. 6 Q. Okay. Now, the time from 1997 7 to 2016 while you were at McKesson, during 8 that entire span, were you a director of 9 regulatory affairs? 10 A. I started as a manager of 11 regulatory affairs. 12 Q. Okay. So tell me what time 13 period you were the manager. 14 A. It was approximately a year, so 15 approximately '97-98. 16 Q. Okay. 17 A. I don't remember the exact time 18 frame. 19 Q. That approximation is good 20 enough. So approximately 1998 you take over 21 as director of regulatory affairs. Do you 22 hold that position until 2016 when you leave? 23 A. That's correct. 24 Q. Okay. Do you know what month 25 in 2016 you left?</p>

1 what the scope is here. 2 You also said you handled DEA 3 registrations and state licensure? 4 A. Correct. 5 Q. For what time period did you 6 have those responsibilities? 7 A. '97 till 2016. 8 Q. Okay. You mentioned being 9 actively involved in the -- I think it was 10 NWMA? Is that right? 11 A. HDMA. 12 Q. Right. I think you mentioned 13 the predecessor term. 14 A. NWDA, National Wholesale Drug 15 Association. 16 Q. Which then became the HDMA, 17 right? 18 A. And now is NDA, I believe, yes. 19 Q. I think maybe HDA. 20 A. HDA. 21 Q. I think so. It doesn't matter. 22 A. Okay. 23 Q. Okay. What sort of committees 24 were you on at NWDA? 25 A. I was on the federal committees	Page 26 1 Give me a minute to object, if 2 you don't mind. 3 QUESTIONS BY MR. BOGLE: 4 Q. How frequently would you attend 5 meetings for NWDA, approximately? 6 A. Approximately twice a year. 7 Q. Okay. Would those meetings 8 generally be attended by employees of other 9 pharmaceutical distributors as well? 10 A. That's correct. 11 Q. Okay. You also mentioned 12 having responsibility for ARCOS. Can you 13 tell me what you did related to ARCOS? 14 A. I would train our employees at 15 our facilities when they needed training. I 16 would assist in problems that they may have 17 understanding what types of code assignments 18 would be associated with a type of 19 transaction. If they had error reports that 20 they needed assistance with, and any 21 communications from ARCOS corporate, then I 22 would typically work with them on that. 23 Q. Okay. And when it came to the 24 ARCOS training you're referring to, are you 25 talking about training people at the
Page 27 1 in reference to DEA, also state committee, 2 pharmaceutical waste management committee, 3 transportation committee. 4 Q. Okay. Let's talk about the 5 federal DEA committee. What did you do -- 6 what was your involvement with that 7 committee? What did you do? 8 A. We would meet typically 9 annually and with our counterparts from other 10 wholesalers and sometimes manufacturers, and 11 we would discuss issues that were happening, 12 proposed regulations that were coming up. 13 That's primarily it. 14 Q. Okay. And so this NWDA was a 15 trade association for pharmaceutical 16 distributors primarily, correct? 17 A. That's correct. 18 Q. Okay. And so as part of that 19 association, as a member of that association, 20 you would have interactions with other 21 employees of other pharmaceutical 22 distributors. Is that fair? 23 A. That's correct. 24 MR. EPPICH: Object to the 25 form.	Page 29 1 distribution centers? 2 A. That's correct. 3 Q. All right. So from 1997 to 4 2007, would you have had responsibility for 5 regulatory compliance for all of McKesson's 6 distribution centers? 7 A. For the pharmaceutical 8 division. 9 Q. Okay. Well, let me rephrase it 10 because I think that's a fair clarification. 11 So from 1997 to 2007, would you 12 have had responsibility for compliance with 13 the Controlled Substances Act as it pertained 14 to all of McKesson's distribution centers? 15 A. That would be correct. 16 Q. Okay. And, now, in 2008, as I 17 understand it, there were some additional 18 people added to McKesson's regulatory team. 19 Is that true? 20 A. That's correct. 21 Q. Okay. And so when that change 22 occurred and additional people were added, as 23 I understand it, you would then have not been 24 responsible for all of those distribution 25 centers when it pertains to Controlled

<p style="text-align: right;">Page 34</p> <p>1 communications took place between McKesson 2 headquarters and DEA headquarters. 3 QUESTIONS BY MR. BOGLE: 4 Q. Okay. Do you recall what 5 presentations you received in that regard? 6 A. There was a DEA conference 7 where they had a presentation and they were 8 talking about the levels of opioids that were 9 being used out -- illegitimately. I don't 10 recall the exact details of it, but they had 11 a presentation -- 12 Q. Okay. 13 A. -- at a national conference. 14 Q. Okay. Would that have been a 15 conference you attended in 2007? 16 A. I don't recall the exact date 17 of that conference. 18 Q. Okay. Did you ever have any 19 personal concern while you were at McKesson 20 that there was an opioid epidemic ongoing? 21 A. No, I didn't. 22 MR. EPPICH: Object to the 23 form. 24 QUESTIONS BY MR. BOGLE: 25 Q. Okay. Are you familiar with</p>	<p style="text-align: right;">Page 36</p> <p>1 Okay, Mr. Hilliard. What I've 2 handed you as Exhibit 1 you see is an e-mail 3 on the first page and then sort of a 4 PowerPoint slide deck behind it. 5 Do you see that? 6 A. I see that. 7 Q. Okay. And starting with the 8 e-mail on the first page, you see that's an 9 e-mail from Donald Walker dated May 2, 2012, 10 to several individuals, including yourself, 11 right? 12 A. I see that. 13 Q. Okay. And the subject is Know 14 Your Customer. 15 Do you see that subject line? 16 A. Yes, I see that. 17 Q. He says there in the first line 18 in the body: On Monday I will be making a 19 presentation to the ISMC sales force at NSC 20 around Know Your Customer. 21 What was Know Your Customer? 22 A. It's the name of the 23 presentation. 24 Q. Okay. Are you aware of any 25 program that McKesson implemented at any</p>
<p style="text-align: right;">Page 35</p> <p>1 the term "diversion"? 2 A. I am. 3 Q. What do you understand that 4 term to mean? 5 MR. EPPICH: Object to the 6 form. Calls for a legal conclusion. 7 A. Controlled substance 8 pharmaceuticals being utilized outside the 9 course of legal requirements under the CSA. 10 QUESTIONS BY MR. BOGLE: 11 Q. And while you were at McKesson, 12 did you see any instances of diversion of 13 McKesson-supplied opioids? 14 MR. EPPICH: Object to the 15 form. 16 A. Not that I recall. 17 QUESTIONS BY MR. BOGLE: 18 Q. All right. I'm going to hand 19 you what I'm marking as Exhibit 1.1651, which 20 is also Exhibit 1 to your deposition, and 21 that's MCKMDL00498169. 22 (McKesson-Hilliard Exhibit 1 23 was marked for identification.) 24 QUESTIONS BY MR. BOGLE: 25 Q. There you go, sir.</p>	<p style="text-align: right;">Page 37</p> <p>1 point in time to know their customers as it 2 related to opioid purchases? 3 MR. EPPICH: Object to the 4 form. 5 A. I don't recall it in that 6 specifics. 7 QUESTIONS BY MR. BOGLE: 8 Q. Okay. The next sentence in the 9 e-mail says: This is intended to be an 10 awareness awakening session that we as a 11 regulatory team will follow up on during the 12 upcoming year. 13 Do you see that? 14 A. I see that. 15 Q. Okay. And then if you look, 16 I'm on page .5, the page numbers at the top 17 right. That says there Government's View of 18 the Problem at the top of that slide. 19 Do you see that? 20 A. I see that. 21 Q. Okay. And in the box on the 22 left it says: Alarming rate of increase of 23 prescription drug abuse beginning 24 approximately five years ago, especially 25 hydrocodone (Vicodin) and opioid pain drugs</p>

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<p>1 (Oxycontin and Oxycodone).</p> <p>2 Do you see that?</p> <p>3 A. I see that.</p> <p>4 Q. Okay. And on the right it</p> <p>5 says, the first bullet point: CDC currently</p> <p>6 classifies prescription drug abuse as an</p> <p>7 epidemic.</p> <p>8 Do you see that?</p> <p>9 A. I see that.</p> <p>10 Q. Does this jog your memory about</p> <p>11 receiving any information about a potential</p> <p>12 opioid epidemic while you were at McKesson?</p> <p>13 MR. EPPICH: Object to the</p> <p>14 form. Misstates the document.</p> <p>15 A. I vaguely recall the</p> <p>16 presentation. I don't recall the details of</p> <p>17 the presentation but this would have been</p> <p>18 considered a training document.</p> <p>19 QUESTIONS BY MR. BOGLE:</p> <p>20 Q. Okay. Is this a document you</p> <p>21 would have reviewed as a matter of course</p> <p>22 when you received it?</p> <p>23 A. I don't recall receiving it,</p> <p>24 but it does -- it does seem familiar, so</p> <p>25 probably in the normal course I would review</p>	<p>1 from heroin and cocaine combined.</p> <p>2 Do you see that?</p> <p>3 A. I see that.</p> <p>4 Q. And the last bullet point said:</p> <p>5 In some states death from prescription</p> <p>6 painkiller overdoses surpass those from</p> <p>7 traffic accidents.</p> <p>8 Do you see that?</p> <p>9 A. I see that.</p> <p>10 Q. Is that information you recall</p> <p>11 being aware of while you were at McKesson?</p> <p>12 A. Again, I don't recall the</p> <p>13 details of this.</p> <p>14 Q. Are you aware that there have</p> <p>15 been congressional hearings in the last</p> <p>16 couple of years related to the opioid</p> <p>17 epidemic?</p> <p>18 A. I am.</p> <p>19 Q. You are, okay.</p> <p>20 I'm going to hand you what I'm</p> <p>21 marking as Exhibit 2 to your deposition,</p> <p>22 which is Exhibit 1.264. This is a public</p> <p>23 document so no Bates numbers.</p> <p>24 (McKesson-Hilliard Exhibit 2</p> <p>25 was marked for identification.)</p>
<p>1 it.</p> <p>2 Q. Okay. Let's take a look at the</p> <p>3 second bullet point here. It says: 27,000</p> <p>4 died from prescription drug overdoses in</p> <p>5 2007, a five fold increase since 1990.</p> <p>6 Do you see that?</p> <p>7 A. I see that.</p> <p>8 Q. Okay. And the next bullet</p> <p>9 point says: During the same time period ten</p> <p>10 fold increase in medical use of painkillers</p> <p>11 such as oxycodone and hydrocodone.</p> <p>12 Do you see that there?</p> <p>13 A. I see that.</p> <p>14 Q. Okay. Do you ever recall</p> <p>15 becoming aware that there was a, during that</p> <p>16 1990-2007 time frame, a ten-fold increase in</p> <p>17 the use of painkillers like oxycodone and</p> <p>18 hydrocodone?</p> <p>19 MR. EPPICH: Object to the</p> <p>20 form.</p> <p>21 A. I don't recall.</p> <p>22 QUESTIONS BY MR. BOGLE:</p> <p>23 Q. And the next bullet point says:</p> <p>24 Today number of overdose deaths involving</p> <p>25 prescription pain medication exceeds deaths</p>	<p>1 QUESTIONS BY MR. BOGLE:</p> <p>2 Q. Okay. You see here this is a</p> <p>3 document from the U.S. House of</p> <p>4 Representatives Committee on Energy and</p> <p>5 Commerce from May 4, 2018.</p> <p>6 Do you see that?</p> <p>7 A. I see that.</p> <p>8 Q. Okay. And it's -- the</p> <p>9 regarding line says: Hearing entitled</p> <p>10 "Combatting the Opioid Epidemic: Examining</p> <p>11 Concerns About Distribution and Diversion."</p> <p>12 Do you see that there?</p> <p>13 A. I do see that.</p> <p>14 Q. Okay. Have you followed the</p> <p>15 outcomes of any of these congressional</p> <p>16 hearings on the opioid epidemic?</p> <p>17 A. I have not.</p> <p>18 Q. You said you were aware of</p> <p>19 them, right?</p> <p>20 A. I am aware of them but I have</p> <p>21 not followed them. I've been out of</p> <p>22 pharmaceuticals for a while now.</p> <p>23 Q. If you look at the second page</p> <p>24 of this document, underneath the chart it</p> <p>25 says: The U.S. continues to experience an</p>

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<p>1 suspicious orders?</p> <p>2 MR. EPPICH: Object to the</p> <p>3 form.</p> <p>4 QUESTIONS BY MR. BOGLE:</p> <p>5 Q. Why that was a component of it?</p> <p>6 MR. EPPICH: Object to the</p> <p>7 form.</p> <p>8 A. A guidance document provided by</p> <p>9 Rannazzisi.</p> <p>10 QUESTIONS BY MR. BOGLE:</p> <p>11 Q. And do you recall when you</p> <p>12 first saw that guidance document?</p> <p>13 MR. EPPICH: Object to the</p> <p>14 form.</p> <p>15 A. Approximately 2006.</p> <p>16 QUESTIONS BY MR. BOGLE:</p> <p>17 Q. Okay. And so prior to</p> <p>18 receiving that document in approximately</p> <p>19 2006, it was your personal belief that there</p> <p>20 was no responsibility for McKesson to block</p> <p>21 suspicious orders. Is that true?</p> <p>22 MR. EPPICH: Object to the</p> <p>23 form. Calls for a legal conclusion.</p> <p>24 A. It was not a requirement of the</p> <p>25 CSA.</p>	<p>1 form.</p> <p>2 A. We complied with the CSA</p> <p>3 requirements.</p> <p>4 QUESTIONS BY MR. BOGLE:</p> <p>5 Q. Okay. I guess I don't</p> <p>6 understand how that applies to my question.</p> <p>7 I'm just asking if you guys blocked</p> <p>8 suspicious orders prior to 2008.</p> <p>9 MR. EPPICH: Object to the</p> <p>10 form.</p> <p>11 A. Blocking was not a requirement.</p> <p>12 QUESTIONS BY MR. BOGLE:</p> <p>13 Q. So the answer is no, that that</p> <p>14 wasn't done --</p> <p>15 MR. EPPICH: Object to the</p> <p>16 form.</p> <p>17 QUESTIONS BY MR. BOGLE:</p> <p>18 Q. -- prior to 2008?</p> <p>19 A. We complied with the CSA</p> <p>20 requirements.</p> <p>21 Q. Okay. I got that that's your</p> <p>22 answer, but I'm trying to just get a specific</p> <p>23 answer to a specific question, which is to</p> <p>24 nail down in time when McKesson, to your</p> <p>25 understanding, started blocking suspicious</p>
<p>1 QUESTIONS BY MR. BOGLE:</p> <p>2 Q. Okay. And so if I'm</p> <p>3 understanding your testimony correctly, prior</p> <p>4 to the implementation of the CSMP in 2008, it</p> <p>5 was not McKesson's policy to block suspicious</p> <p>6 orders. Is that true?</p> <p>7 MR. EPPICH: Object to the</p> <p>8 form.</p> <p>9 A. Blocking of the orders was not</p> <p>10 a requirement under the CSA.</p> <p>11 QUESTIONS BY MR. BOGLE:</p> <p>12 Q. Yeah. I'm just asking whether</p> <p>13 it was a company policy to block suspicious</p> <p>14 orders prior to 2008. I'm not asking about</p> <p>15 the CSA right now.</p> <p>16 MR. EPPICH: Object to the</p> <p>17 form.</p> <p>18 A. We complied with requirements</p> <p>19 under the CSA.</p> <p>20 QUESTIONS BY MR. BOGLE:</p> <p>21 Q. Yeah. I'm just asking whether</p> <p>22 prior to 2008 when the CSMP was implemented,</p> <p>23 was it McKesson's policy to not block</p> <p>24 suspicious orders when they were detected?</p> <p>25 MR. EPPICH: Object to the</p>	<p>1 Page 51</p> <p>1 orders for controlled substances. Can you</p> <p>2 tell me when that started occurring?</p> <p>3 A. The CSMP, which was about 2008.</p> <p>4 Q. Okay. I'm going to hand you</p> <p>5 what I'm marking as Exhibit 3, which is</p> <p>6 1.1464, and that's MCKMDL00478906.</p> <p>7 (McKesson-Hilliard Exhibit 3</p> <p>8 was marked for identification.)</p> <p>9 QUESTIONS BY MR. BOGLE:</p> <p>10 Q. And you see this is a letter</p> <p>11 from the U.S. Department of Justice Drug</p> <p>12 Enforcement Administration dated</p> <p>13 September 27, 2006.</p> <p>14 Do you see that?</p> <p>15 A. I see that.</p> <p>16 Q. Is this the guidance document</p> <p>17 from Mr. Rannazzisi that you were referring</p> <p>18 to a minute ago?</p> <p>19 A. Yes, it is.</p> <p>20 Q. Okay. So you've seen this</p> <p>21 document before. True?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. I want to look at a</p> <p>24 couple of components of this letter. It</p> <p>25 says, in the first line: This letter is</p>

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<p>1 A. I don't recall the other states 2 other than what was listed in the other 3 letter.</p> <p>4 QUESTIONS BY MR. BOGLE:</p> <p>5 Q. Okay. Well, we looked at 6 Exhibit 4 a minute ago. One of the 7 pharmacies listed there was United 8 Prescription Services.</p> <p>9 You recall that?</p> <p>10 A. Yes.</p> <p>11 Q. You know that's a Florida 12 pharmacy, right?</p> <p>13 MR. EPPICH: Object to the 14 form. Calls for speculation.</p> <p>15 A. That's my recollection.</p> <p>16 QUESTIONS BY MR. BOGLE:</p> <p>17 Q. Okay. We'll look at it in a 18 minute. I mean, if you don't know, I can 19 show you.</p> <p>20 The next bullet point actually 21 says: Specifically addressed concerns with 22 United Prescription Services, a current 23 customer of McKesson's.</p> <p>24 Do you see that?</p> <p>25 A. Yes, I see that.</p>	<p>1 October 10. It says: On October 10, 2005, a 2 DEA investigator from the Tampa District 3 Office contacted Bill Mahoney at the McKesson 4 Distribution Center in Lakeland, Florida, and 5 expressed concerns of hydrocodone sales to 6 United Prescription Services.</p> <p>7 Do you see that?</p> <p>8 A. I see that.</p> <p>9 Q. Okay. Then the next entry</p> <p>10 says: The E-Commerce Section retrieved ARCos 11 data which revealed that between October 10 12 and October 21, 2005, the following alleged 13 Internet pharmacies received the identified 14 quantities of hydrocodone.</p> <p>15 And then there's one, two, 16 three, four, five, six pharmacies listed, 17 right?</p> <p>18 A. Yes, that's what's listed here.</p> <p>19 Q. Okay. And for this 11-day 20 period, it's noted in this letter that United 21 Prescription Services received 252,100 dosage 22 units of hydrocodone from McKesson, right?</p> <p>23 MR. EPPICH: Object to the 24 form. Foundation.</p> <p>25 A. That's what's stated on the</p>
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<p>1 Q. And we do know that was covered 2 in the September 1, 2005 meeting, right?</p> <p>3 A. Agreed.</p> <p>4 Q. Their concerns about that 5 pharmacy?</p> <p>6 A. Agreed.</p> <p>7 Q. Okay. It continues: On 8 October 6, 2005, Mr. Mapes called Mr. Gilbert 9 to discuss comments the E-Commerce Section 10 had received that McKesson Corp. was not 11 taking the Internet pharmacy problem 12 seriously. Mr. Mapes was assured by 13 Mr. Gilbert that McKesson Corp. was taking 14 the matters seriously and working to change 15 their procedures.</p> <p>16 Do you see that?</p> <p>17 A. Yes, I see that.</p> <p>18 Q. Who is Mr. Gilbert?</p> <p>19 A. Outside counsel.</p> <p>20 Q. So he's you guys' lawyer, 21 right?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. And that's on October 24 5th.</p> <p>25 And the next entry is on</p>	<p>1 document.</p> <p>2 QUESTIONS BY MR. BOGLE:</p> <p>3 Q. Okay. And that Universal Rx 4 received 254,700 dosage units during this 5 11-day period from McKesson of hydrocodone, 6 right? That's what the letter states.</p> <p>7 MR. EPPICH: Object to the form 8 and foundation.</p> <p>9 A. That's listed on this letter, 10 yes.</p> <p>11 QUESTIONS BY MR. BOGLE:</p> <p>12 Q. Okay. And that Bi-Wise 13 Pharmacy received 158,400 dosage units of 14 hydrocodone during this 11-day period, from 15 McKesson, right?</p> <p>16 MR. EPPICH: Object to the 17 form; foundation.</p> <p>18 QUESTIONS BY MR. BOGLE:</p> <p>19 Q. That's what the letter states.</p> <p>20 A. That's what the letter states.</p> <p>21 Q. The letter also states that 22 Avee Pharmacy received 220,200 dosage units 23 of hydrocodone from McKesson in this 11-day 24 period, right?</p> <p>25 MR. EPPICH: Object to the</p>

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<p>1 form; foundation.</p> <p>2 QUESTIONS BY MR. BOGLE:</p> <p>3 Q. That's what the letter states.</p> <p>4 A. That's what the letter states.</p> <p>5 Q. The letter also states that</p> <p>6 Medipharm Rx received 500,900 dosage units of</p> <p>7 hydrocodone in 11 days from McKesson, right?</p> <p>8 MR. EPPICH: Object to the</p> <p>9 form; foundation.</p> <p>10 A. That's what the letter states.</p> <p>11 QUESTIONS BY MR. BOGLE:</p> <p>12 Q. And finally, Accumed Pharmacy</p> <p>13 received 404,400 dosage units of hydrocodone</p> <p>14 from McKesson in 11 days, right?</p> <p>15 MR. EPPICH: Object to the form</p> <p>16 and foundation.</p> <p>17 A. That's what the letter states.</p> <p>18 QUESTIONS BY MR. BOGLE:</p> <p>19 Q. It continues thereafter and</p> <p>20 says: Mr. Rannazzisi then addressed the</p> <p>21 representatives of McKesson Corp. and</p> <p>22 informed them that it was his concerted</p> <p>23 opinion based on the information presented,</p> <p>24 the DEA needed to ask for the surrender of</p> <p>25 McKesson's Lakeland Distribution Center</p>	<p>1 their own admission, was unable to provide a</p> <p>2 plausible explanation for the sale of over</p> <p>3 2 million dosage units of hydrocodone in a</p> <p>4 21-day period to pharmacies previously</p> <p>5 identified by DEA to McKesson Corp.</p> <p>6 Do you see that?</p> <p>7 A. Yes, I see that.</p> <p>8 Q. Okay. And then the last</p> <p>9 paragraph on the bottom of this page</p> <p>10 references you and says: After the</p> <p>11 conclusion of this meeting, it was learned</p> <p>12 from Gary Hilliard of McKesson Corp. that one</p> <p>13 of the reasons they were not able to realize</p> <p>14 the full volume of hydrocodone product going</p> <p>15 out to the Florida pharmacies was that their</p> <p>16 reports only included the name brand</p> <p>17 hydrocodone products distributed and was</p> <p>18 not -- and was leaving out the generic</p> <p>19 products. It was only after realizing that</p> <p>20 the generic were not being reported was</p> <p>21 McKesson Corp. then able to see the large</p> <p>22 quantities that DEA was bringing to</p> <p>23 McKesson's attention.</p> <p>24 Do you see that?</p> <p>25 A. Yes, I see that.</p>
<p>Page 115</p> <p>1 registration or DEA would pursue an Order to</p> <p>2 Show Cause against the DEA registration of</p> <p>3 the McKesson facility in Lakeland, Florida.</p> <p>4 Do you see that?</p> <p>5 A. Yes, I see that.</p> <p>6 Q. So having a DEA registration</p> <p>7 surrendered or having an Order to Show Cause</p> <p>8 brought against a distribution center, those</p> <p>9 are serious enforcement actions, right?</p> <p>10 MR. EPPICH: Object to the</p> <p>11 form.</p> <p>12 A. They are serious.</p> <p>13 QUESTIONS BY MR. BOGLE:</p> <p>14 Q. Okay. And in fact, the DEA did</p> <p>15 file for an Order to Show Cause against</p> <p>16 Lakeland after this point in time, right?</p> <p>17 A. Yes, they did.</p> <p>18 Q. Okay. Continuing on down in</p> <p>19 this letter, I'm skipping that paragraph and</p> <p>20 going to the next one that says, "Through the</p> <p>21 course of the above."</p> <p>22 Do you see that?</p> <p>23 A. Yes, I see that.</p> <p>24 Q. It says: Through the course of</p> <p>25 the above discussion, McKesson Corp., by</p>	<p>Page 117</p> <p>1 Q. Okay. And you recall making</p> <p>2 that statement to somebody at the DEA that</p> <p>3 after the meeting, you recognized that the</p> <p>4 reports you guys ran to track controlled</p> <p>5 substances purchases like this weren't</p> <p>6 picking up the generic products?</p> <p>7 MR. EPPICH: Object to the</p> <p>8 form.</p> <p>9 A. That's my recollection.</p> <p>10 QUESTIONS BY MR. BOGLE:</p> <p>11 Q. That is your recollection?</p> <p>12 Okay.</p> <p>13 And what sort of report were</p> <p>14 you referring to?</p> <p>15 A. I don't recall the report, but</p> <p>16 it was based on item number or SKU number, so</p> <p>17 the identification of the items left out the</p> <p>18 generic items because it was in error.</p> <p>19 Q. Okay. So was the report for</p> <p>20 these pharmacies in Florida run any</p> <p>21 differently than the reports for any other</p> <p>22 pharmacies around the country in tracking</p> <p>23 hydrocodone purchases?</p> <p>24 MR. EPPICH: Object to the</p> <p>25 form. Calls for speculation.</p>

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1 QUESTIONS BY MR. BOGLE: 2 Q. Okay. And what I've handed 3 you, sir, is another document produced to us 4 by McKesson related to this Order to Show 5 Cause proceeding. And you see there's a 6 government exhibit sticker number 38 for this 7 one. 8 Do you see that at the bottom? 9 A. Yes, I see that. 10 Q. Okay. And so this data, I'll 11 represent to you, matches up with their 12 exhibit numbers they list in the Order to 13 Show Cause pleadings we just looked at, okay? 14 A. Okay. 15 Q. If you have any reason to 16 disagree with me, let me know. But I looked 17 at it. 18 And so if you look here, this 19 actually has McKesson hydrocodone sales for 20 October 1, 2005 through January 31, 2006. 21 Do you see that? 22 A. Yes, I see that. 23 Q. And there's a pie chart there, 24 right? 25 A. Yes, I see that.	1 Do you see the data there? 2 MR. EPPICH: Objection to form; 3 Foundation. 4 A. I see what's stated. 5 QUESTIONS BY MR. BOGLE: 6 Q. Okay. And that chart is titled 7 McKesson Hydrocodone distributions October 1, 8 2005 through January 31, 2006. 9 Do you see that title? 10 MR. EPPICH: Objection to form; 11 foundation. 12 A. I see what's stated on the 13 document. 14 QUESTIONS BY MR. BOGLE: 15 Q. Okay. And there's a sum of 16 dosage units, and for 299 other pharmacies 17 the DEA lists 10,767,050 doses of hydrocodone 18 for 299 pharmacies, right? 19 MR. EPPICH: Objection to the 20 form. 21 QUESTIONS BY MR. BOGLE: 22 Q. That's the data provided here. 23 MR. EPPICH: Objection, 24 foundation. 25 A. That's what's stated on the
Page 147	Page 149
1 Q. And so, for example, for Avee 2 Pharmacy, it notes 1,754,800 doses during 3 this October 1, 2005 to January 31, 2006 4 period of time for McKesson hydrocodone 5 sales. 6 Do you see that? 7 MR. EPPICH: Object to the 8 form. Misstates the document. 9 A. I see what's stated on the 10 document. 11 QUESTIONS BY MR. BOGLE: 12 Q. Okay. Do you have any reason 13 to think that's not what that's referring to? 14 A. I don't know enough about this 15 document to know otherwise. 16 Q. Okay. And it lists there for 17 example, as well, Medipharm, 1,252,000 doses 18 of hydrocodone from October 1, 2005 to 19 January 31, 2006. 20 Do you see that in the chart? 21 A. Yes, I see it on the chart. 22 Q. And, for example, if you go to 23 the second page here, so further discussion 24 on this, and they actually compared these 25 seven pharmacies to 299 other pharmacies.	1 document. 2 QUESTIONS BY MR. BOGLE: 3 Q. Okay. And they compare that to 4 these other seven pharmacies, and just doing 5 the rough math for these other seven 6 pharmacies during this three-month period in 7 time, four-month period in time, there's 8 almost 7 million doses of hydrocodone to 9 these seven pharmacies, right? As compared 10 to these 299 other pharmacies. 11 MR. EPPICH: Object to form; 12 foundation. 13 QUESTIONS BY MR. BOGLE: 14 Q. You see that math, right? 15 MR. EPPICH: Object to form; 16 foundation. 17 A. I see what's listed on the 18 document. 19 QUESTIONS BY MR. BOGLE: 20 Q. Okay. And that's the math, 21 right? 22 MR. EPPICH: Object to the form 23 and foundation. 24 A. I see what's written on the 25 document for the total.

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1 QUESTIONS BY MR. BOGLE: 2 Q. Okay. And the grand total is 3 17,136,250, which counts the 299 pharmacies 4 plus the other seven pharmacies subject to 5 the Order to Show Cause, right? 6 MR. EPPICH: Objection, 7 foundation. 8 A. I see what's stated on the 9 form. 10 QUESTIONS BY MR. BOGLE: 11 Q. And that's what's stated, 12 right? 13 A. That's what's listed on the 14 form. 15 Q. Okay. Have you ever reviewed 16 this exhibit before? 17 A. In the preparing, 18 pre-deposition. 19 Q. Okay. And while you guys were 20 getting ready for the Order to Show Cause 21 hearing, I didn't see it in the pleadings -- 22 let me know if you see it anywhere -- was 23 there any submission by McKesson saying this 24 data is wrong that the DEA is submitting here 25 that I just reviewed with you?	1 MR. EPPICH: Foundation, calls 2 for speculation. Form. 3 A. I don't know. 4 QUESTIONS BY MR. BOGLE: 5 Q. Never heard that before? 6 MR. EPPICH: Objection, form. 7 Calls for speculation. 8 A. I don't recall. 9 QUESTIONS BY MR. BOGLE: 10 Q. Okay. Let me hand you another 11 DEA exhibit for the Order to Show Cause 12 hearing marked as Exhibit 10, which is 13 1.1951, Bates number is MCKMDL00496536. 14 THE REPORTER: 10? 15 MR. BOGLE: Did I skip one? 16 I'm sorry, let me get that number 17 back. I may have skipped -- missing 18 some stickers here. Oh, I buried it. 19 Okay. Sorry. 20 (McKesson-Hilliard Exhibit 8 21 was marked for identification.) 22 QUESTIONS BY MR. BOGLE: 23 Q. So it's actually Exhibit 8 is 24 Exhibit 1.1951, so correcting the number. 25 Same document, just correcting the exhibit
1 MR. EPPICH: Object to form; 2 foundation. Calls for speculation. 3 A. I don't know anything about it. 4 QUESTIONS BY MR. BOGLE: 5 Q. Okay. Well, again, you've got 6 the pleadings in front of you. If you happen 7 to see anything that shows that you guys 8 contested that -- I didn't find anything. If 9 you find anything that shows that you guys 10 contested that, let me know during the 11 deposition, okay? 12 MR. EPPICH: Object to the 13 form; calls for speculation. 14 QUESTIONS BY MR. BOGLE: 15 Q. And these seven pharmacies 16 during this period of time, late October 17 to -- '05 -- strike that. 18 These pharmacies from October 19 '05 to January '06 were also some of the 20 biggest purchasing pharmacies for hydrocodone 21 in the country, right? 22 MR. EPPICH: Objection, 23 foundation. 24 QUESTIONS BY MR. BOGLE: 25 Q. You know that, don't you?	1 number. 2 Okay. And this again has a 3 government exhibit number, number 3. You see 4 that stamp on there? 5 A. Yes, I see that. 6 Q. Okay. And this document is 7 titled Pharmacy Rankings for Hydrocodone, 8 October 1, 2005 to January 31, 2006. 9 Do you see that? 10 A. Yes, I see that. 11 Q. Okay. And again, it lists 12 these same seven pharmacies that we've been 13 talking about, right? 14 MR. EPPICH: Object to the 15 form; foundation. 16 A. I see what's listed here. 17 QUESTIONS BY MR. BOGLE: 18 Q. Which is the names of the same 19 seven pharmacies, right? 20 MR. EPPICH: Objection to the 21 form; foundation. 22 A. They appear to be the same 23 names. 24 QUESTIONS BY MR. BOGLE: 25 Q. Okay. And, for example, if we

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<p>1 dates for each of these, right?</p> <p>2 A. Yes, there is.</p> <p>3 Q. And you invoice at the time of</p> <p>4 sale, right?</p> <p>5 MR. EPPICH: Objection;</p> <p>6 foundation, calls for speculation.</p> <p>7 A. I don't recall if it was the</p> <p>8 time of sale or date of shipment.</p> <p>9 QUESTIONS BY MR. BOGLE:</p> <p>10 Q. Or of shipment, okay.</p> <p>11 A. Shipment date.</p> <p>12 Q. All right. So, for example,</p> <p>13 what we've got here as Exhibit 10 is, I</p> <p>14 believe, about 600-plus pages of what</p> <p>15 McKesson deemed for this month to be</p> <p>16 suspicious Schedule II or Schedule III</p> <p>17 controlled substance orders, right?</p> <p>18 MR. EPPICH: Objection to the</p> <p>19 form.</p> <p>20 A. These are what showed up on our</p> <p>21 suspicious order report as -- and then</p> <p>22 reported to the DEA.</p> <p>23 QUESTIONS BY MR. BOGLE:</p> <p>24 Q. Right. But what the whole</p> <p>25 purpose of this was, you're providing 600 --</p>	<p>1 that had occurred in our facilities and there</p> <p>2 was never an issue with that. So this is the</p> <p>3 format for which the original documentation</p> <p>4 was supplied to DEA.</p> <p>5 MR. BOGLE: I move to strike as</p> <p>6 nonresponsive.</p> <p>7 QUESTIONS BY MR. BOGLE:</p> <p>8 Q. My question was simply that</p> <p>9 during the time that you were with McKesson</p> <p>10 in the regulatory department, was it your</p> <p>11 understanding that the intent was when a DU45</p> <p>12 report like the one we're looking at here was</p> <p>13 supplied to the DEA, was that -- was that</p> <p>14 intended to or not intended to be what</p> <p>15 McKesson deemed to be suspicious orders from</p> <p>16 the prior month?</p> <p>17 MR. EPPICH: Object to the</p> <p>18 form. It calls for speculation; asked</p> <p>19 and answered.</p> <p>20 A. Yeah. Again, it was -- this is</p> <p>21 what needed to be reviewed. This was not</p> <p>22 specifically a suspicious order.</p> <p>23 QUESTIONS BY MR. BOGLE:</p> <p>24 Q. Okay. So the view during this</p> <p>25 time period when DU45s were used were that</p>
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<p>1 in this instance, 600-plus pages to the DEA</p> <p>2 for this month of suspicious controlled</p> <p>3 substance sales that McKesson had made from</p> <p>4 the prior month, right?</p> <p>5 MR. EPPICH: Objection to the</p> <p>6 form and the characterization.</p> <p>7 A. They were submitted for DEA to</p> <p>8 review. The report is titled "suspicious"</p> <p>9 but it's orders that need to be reviewed and</p> <p>10 they were supplied to DEA for review.</p> <p>11 QUESTIONS BY MR. BOGLE:</p> <p>12 Q. Okay. So let me make sure I</p> <p>13 understand that. So when these reports would</p> <p>14 have been submitted to the DEA, it was not</p> <p>15 the intent of the regulatory department for</p> <p>16 the conclusion to be drawn that McKesson</p> <p>17 believed these were suspicious orders. Is</p> <p>18 that true?</p> <p>19 MR. EPPICH: Object to the</p> <p>20 form; calls for speculation.</p> <p>21 A. This was part of the Suspicious</p> <p>22 Order Task Force. This was the format for</p> <p>23 which industry came to the conclusion to</p> <p>24 provide this information to the DEA and DEA</p> <p>25 was good with it. There was DEA inspections</p>	<p>1 this is not specifically a suspicious order</p> <p>2 report. Am I understanding you right?</p> <p>3 MR. EPPICH: Object to the</p> <p>4 form. Misstates prior testimony.</p> <p>5 QUESTIONS BY MR. BOGLE:</p> <p>6 Q. If I'm misstating it, let me</p> <p>7 know. I'm trying to understand.</p> <p>8 A. The title was Suspicious Order</p> <p>9 Report or Suspicious Purchase Report, but</p> <p>10 this -- with the vast quantity of orders that</p> <p>11 are conducted on a daily and nightly basis,</p> <p>12 this provides a threshold for which to</p> <p>13 review.</p> <p>14 And so reviews would be</p> <p>15 conducted nightly on the reports and they'd</p> <p>16 be flagged and then submitted to the DEA, and</p> <p>17 then the report in its entirety would be</p> <p>18 provided to the DEA on a monthly basis. So</p> <p>19 they would have all this information.</p> <p>20 Q. Right. I'm asking about from</p> <p>21 McKesson's perspective, though, not DEA's</p> <p>22 perspective. So from McKesson's perspective</p> <p>23 as you understood it in the regulatory</p> <p>24 department -- strike that, let me make it</p> <p>25 even easier.</p>

<p style="text-align: right;">Page 186</p> <p>1 MR. EPPICH: Object to the 2 form. Calls for a legal conclusion. 3 A. I don't know what each of them 4 did after they conducted that report to the 5 DEA. I don't know what they kept on file. 6 There was a notification log for 7 documentation that they did maintain.</p> <p>8 QUESTIONS BY MR. BOGLE:</p> <p>9 Q. Okay. So, again, so to the 10 extent that was done, there should be a log 11 out there that shows it was done, right?</p> <p>12 MR. EPPICH: Object to the 13 form. Calls for speculation.</p> <p>14 A. Part of the SOP was for them to 15 fill out a log whenever they made contact to 16 DEA.</p> <p>17 QUESTIONS BY MR. BOGLE:</p> <p>18 Q. Okay. So going back to the 19 question I asked a couple minutes ago, in 20 2007, the DEA specifically notified 21 McKesson's regulatory department that the 22 DU45 report, in its view, was not sufficient 23 to satisfy the requirements of reporting 24 suspicious orders, right?</p> <p>25 MR. EPPICH: Object to the</p>	<p style="text-align: right;">Page 188</p> <p>1 member of HDMA at this point in time, right? 2 A. I was a member during this 3 time.</p> <p>4 Q. Okay. What does HDMA stand 5 for?</p> <p>6 A. Healthcare Distribution 7 Management Association.</p> <p>8 Q. And again, that was y'all's 9 trade association, right?</p> <p>10 A. That's correct.</p> <p>11 Q. Okay. So looking at this 12 document, it notes that there are attendees 13 at this meeting from both HDMA and DEA, 14 right, at the top?</p> <p>15 A. Yes, that's what's stated.</p> <p>16 Q. And one of the DEA attendees is 17 a person we talked about before, Mr. Mike 18 Mapes, right?</p> <p>19 A. Yes, it is.</p> <p>20 Q. Okay. And if you go to the 21 second page of this document, the top bullet 22 point says: DEA also does not want to 23 receive suspicious order reports that merely 24 reflect volumes that went over a threshold; 25 they wanted reports that are "true"</p>
<p style="text-align: right;">Page 187</p> <p>1 form. Calls for speculation.</p> <p>2 A. I don't recall the exact 3 verbiage of what was requested.</p> <p>4 QUESTIONS BY MR. BOGLE:</p> <p>5 Q. Okay. Do you remember any 6 discussion along those lines, that the DU45 7 wasn't gonna cut it?</p> <p>8 MR. EPPICH: Object to the form 9 and the characterization.</p> <p>10 A. I don't recall exactly what was 11 requested.</p> <p>12 QUESTIONS BY MR. BOGLE:</p> <p>13 Q. Okay.</p> <p>14 (McKesson-Hilliard Exhibit 11 15 was marked for identification.)</p> <p>16 QUESTIONS BY MR. BOGLE:</p> <p>17 Q. I'm going to hand you what I'm 18 marking as Exhibit 1.1823, which is 19 Exhibit 11 to your deposition, and that's 20 MCKMDL00574906. And this is titled Summary 21 of DEA-HDMA Meeting on Suspicious Orders, 22 Meeting Date: September 7, 2007.</p> <p>23 Do you see that?</p> <p>24 A. Yes, I see that.</p> <p>25 Q. And you would have been a</p>	<p style="text-align: right;">Page 189</p> <p>1 suspicious orders. Similarly, they do not 2 want to receive what they called "excessive 3 purchase" reports which had been used in the 4 past.</p> <p>5 Do you see that?</p> <p>6 A. I see that.</p> <p>7 Q. Okay. And were you aware of 8 this discussion that went on with your trade 9 association and DEA in September 2007?</p> <p>10 A. I recall that there was a 11 meeting.</p> <p>12 Q. Okay. And so this information 13 I just read to you about the DEA's 14 expectations, that would have been conveyed 15 to you and your regulatory team, right?</p> <p>16 MR. EPPICH: Object to the 17 form. Misstates prior testimony.</p> <p>18 A. I don't recall specifically 19 receiving it, but it is likely that I did.</p> <p>20 QUESTIONS BY MR. BOGLE:</p> <p>21 Q. Okay. And I think I can 22 represent to you this came out of McKesson's 23 files, so at least somebody at McKesson got 24 this.</p> <p>25 And so what they're referencing</p>

1 Q. Okay. And you know that they 2 were specifically talking about the DU45 3 report, right? 4 MR. EPPICH: Objection, 5 foundation. 6 QUESTIONS BY MR. BOGLE: 7 Q. It's referenced by name, isn't 8 it? 9 MR. EPPICH: Objection, 10 foundation. 11 A. I believe it was stated in the 12 e-mail trail. 13 QUESTIONS BY MR. BOGLE: 14 Q. All right. So now that you 15 have a chance to review the full context of 16 this entire e-mail chain, do you agree or 17 disagree with Mr. Gustin's following 18 statement: Simply reporting 19 larger-than-usual orders does not, when there 20 are so many plausible and routine reasons for 21 orders to be larger than normal -- and "does 22 not," he's referring to meeting the spirit 23 and letter of the regulation for reporting 24 suspicious orders. 25 Agree or disagree or no opinion	Page 206 1 the e-mail. 2 MR. BOGLE: Okay. I'm going to 3 something else, so if you want to take 4 it now or I can plug along if you 5 want. 6 MR. EPPICH: That's fine, let's 7 take a lunch. 8 THE VIDEOGRAPHER: Off the 9 record at 12:31. 10 (Recess taken, 12:31 p.m. to 11 1:17 p.m.) 12 THE VIDEOGRAPHER: Stand by. 13 The time is 1:17 p.m. Back on the 14 record, beginning of File 4. 15 QUESTIONS BY MR. BOGLE: 16 Q. All right, Mr. Hilliard. Just 17 to reorient ourselves here, earlier in the 18 deposition, you recall discussing with me the 19 DEA's investigation of the Lakeland 20 distribution center regarding distribution of 21 hydrocodone to seven Florida pharmacies? 22 A. That's correct. 23 Q. Okay. And you're aware after 24 that investigation, the DEA also began 25 investigating some other distribution centers
1 on Mr. Gustin's statement there? 2 MR. EPPICH: Objection to the 3 form; calls for a legal conclusion. 4 A. I don't have an opinion on 5 his -- on his statement. 6 QUESTIONS BY MR. BOGLE: 7 Q. Okay. And I looked to see if 8 you responded with disagreement to the 9 statement. I didn't find anything. Do you 10 have any specific recollection of you 11 disagreeing with his statement here? 12 MR. EPPICH: Objection to the 13 form. Calls for speculation. 14 A. I don't recall the specifics of 15 this e-mail. 16 QUESTIONS BY MR. BOGLE: 17 Q. Okay. Again, I think my 18 question is different than that. 19 Do you have a specific 20 recollection of disagreeing with his e-mail 21 in writing? 22 MR. EPPICH: Objection to the 23 form. 24 A. I do not have a recollection of 25 reviewing this e-mail or making a response to	Page 207 Page 209 1 within McKesson as to their distribution of 2 opioids? 3 MR. EPPICH: Object to the 4 form. 5 A. Yes. There was additional 6 investigations. 7 QUESTIONS BY MR. BOGLE: 8 Q. Okay. And ultimately those 9 investigations culminated in McKesson 10 entering into a settlement agreement with the 11 DEA in 2008, right? 12 MR. EPPICH: Object to the 13 form. 14 A. There was a settlement 15 agreement in 2008. 16 QUESTIONS BY MR. BOGLE: 17 Q. Okay. And you're aware that 18 occurred, right? That a settlement occurred 19 in 2008? 20 A. Yes, I am. 21 Q. Okay. And you're aware that 22 settlement pertained to allegations from the 23 DEA that McKesson violated the Controlled 24 Substances Act in distributing opioids from 25 several of its distribution centers, right?

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<p>1 A. Correct.</p> <p>2 Q. Okay. Have you seen the</p> <p>3 settlement agreement itself?</p> <p>4 A. I have seen it at one time.</p> <p>5 Q. Okay. All right. I'm going to</p> <p>6 hand you what I'm marking as Exhibit 13,</p> <p>7 which is also 1.889, and that's</p> <p>8 MCKMDL00337001.</p> <p>9 (McKesson-Hilliard Exhibit 13</p> <p>10 was marked for identification.)</p> <p>11 QUESTIONS BY MR. BOGLE:</p> <p>12 Q. Here you go, sir.</p> <p>13 Okay. What I've just handed</p> <p>14 you, Mr. Hilliard, as Exhibit 13 is titled at</p> <p>15 the top Settlement and Release Agreement and</p> <p>16 Administrative Memorandum Agreement dated in</p> <p>17 the first paragraph May 2nd, 2008.</p> <p>18 Do you see that?</p> <p>19 A. Yes, I see that.</p> <p>20 Q. Okay. And do you recognize</p> <p>21 this to be the settlement agreement we just</p> <p>22 referenced from 2008?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And if we'd go</p> <p>25 specifically to -- let's see, my page numbers</p>	<p>1 McKesson-Landover sold approximately</p> <p>2 3 million dosage units of hydrocodone to</p> <p>3 NewCare Pharmacy in Baltimore, and failed to</p> <p>4 report these sales as suspicious orders to</p> <p>5 DEA when discovered, as required by and in</p> <p>6 violation of -- and then it lists the C.F.R.</p> <p>7 and the U.S.C.</p> <p>8 And then it says: Further,</p> <p>9 from August 2006 to February 2007,</p> <p>10 McKesson-Landover sold large quantities of</p> <p>11 phentermine-based products to Smeeta Pharmacy</p> <p>12 in Highland, Maryland, and failed to report</p> <p>13 these sales as suspicious orders to DEA when</p> <p>14 discovered, as required by and in violation</p> <p>15 of -- and again it lists the statutes.</p> <p>16 Do you see where I'm reading</p> <p>17 there?</p> <p>18 A. I see that.</p> <p>19 Q. Okay. Were you involved at all</p> <p>20 in investigating whether the allegations the</p> <p>21 DEA was making here were accurate or not?</p> <p>22 A. Not that I recall.</p> <p>23 Q. Okay. Then if you see in</p> <p>24 section B, and I wasn't going to read this</p> <p>25 whole section but you can look at it here for</p>
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<p>1 are different here. There's an Appendix B</p> <p>2 about halfway through the document that</p> <p>3 starts the actual settlement agreement. Do</p> <p>4 you see where I'm at there? Sorry, my page</p> <p>5 numbers don't match yours on this so I can't</p> <p>6 give you a specific number. I'm sorry, I</p> <p>7 would if I could. For reason -- but that's</p> <p>8 what the page looks like right there.</p> <p>9 MR. EPPICH: I think it's on</p> <p>10 Bates 337012.</p> <p>11 QUESTIONS BY MR. BOGLE:</p> <p>12 Q. It says Appendix B at the top</p> <p>13 left, Settlement Agreement at the top middle.</p> <p>14 See where I'm at?</p> <p>15 A. Found it.</p> <p>16 Q. All right. So this starts the</p> <p>17 actual settlement agreement itself. So I</p> <p>18 want to go to the next page that talks about</p> <p>19 the covered conduct in the agreement, which</p> <p>20 is number 8 in the middle of the page.</p> <p>21 Do you see where I'm at?</p> <p>22 A. Yes, I do.</p> <p>23 Q. Okay. And A there says:</p> <p>24 Within the District of Maryland: From</p> <p>25 January 2005 through October 2006,</p>	<p>1 yourself, this talks about the conduct that</p> <p>2 we actually covered for the seven</p> <p>3 pharmacies -- seven Florida pharmacies that</p> <p>4 were handled by the Lakeland distribution</p> <p>5 center, right?</p> <p>6 A. Yes. It's listed here.</p> <p>7 Q. And that's the same conduct we</p> <p>8 talked about before, right? That's what they</p> <p>9 discuss here.</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And then in letter C:</p> <p>12 Within the Southern District of Texas, it</p> <p>13 says: From February to September 2007,</p> <p>14 McKesson-Conroe sold approximately 2.6</p> <p>15 million dosage units of hydrocodone to</p> <p>16 Mercury Drive Pharmacy and Maswoswe's</p> <p>17 Alternative Pharmacy and failed to report</p> <p>18 these sales as suspicious orders to DEA when</p> <p>19 discovered, as required by and in violation</p> <p>20 of -- and again it lists the statutes.</p> <p>21 You see that there?</p> <p>22 A. I see that.</p> <p>23 Q. And on the next page, it</p> <p>24 continues with letters D, E and F. Letters D</p> <p>25 involve allegations of large quantities of</p>

<p style="text-align: right;">Page 214</p> <p>1 hydrocodone sent to three Colorado pharmacies 2 out of the McKesson-Aurora distribution 3 center from September 2005 to November 2007, 4 right? 5 A. I see that. 6 Q. E involves McKesson-Salt Lake 7 and distribution of 824,000 units of 8 hydrocodone, oxycodone, fentanyl and 9 methadone to the Blackfeet Clinic in 10 Browning, Montana from January 2005 to 11 October 2007. 12 Do you see that? 13 A. I see that. 14 Q. Okay. And then finally, there 15 is, from McKesson-West Sacramento, 16 allegations of theft or significant loss of 17 controlled substances on 28 separate 18 occasions that were not reported timely to 19 the DEA. 20 Do you see that? 21 A. I see that. 22 Q. Okay. And you know that for 23 this covered conduct, there was a fine paid 24 of \$13.25 million by McKesson, right? 25 A. Correct.</p>	<p style="text-align: right;">Page 216</p> <p>1 QUESTIONS BY MR. BOGLE: 2 Q. There's yours, sir, and there's 3 yours. 4 All right. I've handed you a 5 PowerPoint deck titled Lifestyle Drugs & 6 Internet Pharmacies. 7 Do you see that? 8 A. I see that. 9 Q. Okay. And it's noted to be, in 10 the slide at the far right there, it says 11 National Operations Conference 2007. 12 Do you see that reference? 13 A. I see that. 14 Q. Okay. Have you seen this slide 15 deck before? 16 A. I have seen it before. 17 Q. Okay. And it's noted to be 18 created by Donald Walker, who we've talked 19 about a little bit earlier, right? 20 A. That's correct. 21 Q. Okay. And if you go here to 22 page .3, there's a slide on this PowerPoint 23 deck titled Public Health Issues. 24 Do you see where I'm at? 25 A. I see that.</p>
<p style="text-align: right;">Page 215</p> <p>1 Q. Okay. And as a result of these 2 investigations by DEA in 2005 and 2006, in 3 addition to entering the settlement 4 agreement, McKesson modified its Suspicious 5 Order Monitoring Program to shift to the 6 Lifestyle Drug Monitoring Program, right? 7 MR. EPPICH: Object to the 8 form. Calls for speculation. 9 A. The Lifestyle Drug Monitoring 10 Program was developed in the 2007 time frame. 11 QUESTIONS BY MR. BOGLE: 12 Q. Okay. We'll take a look at a 13 few things related to the LDMP -- you're okay 14 with me calling it LDMP? 15 A. Please. 16 Q. Okay. I think we're talking 17 about the same thing there. 18 All right. So I'm going to 19 hand you what I'm marking as Exhibit 1.1830, 20 which is Exhibit 14 to your deposition, and 21 that is, for those keeping track of these 22 things, MCKMDL00403340. 23 (McKesson-Hilliard Exhibit 14 24 was marked for identification.) 25 --oOo--</p>	<p style="text-align: right;">Page 217</p> <p>1 Q. Okay. The first bullet point 2 there says: Abuse of prescription drugs has 3 risen 66% since 2000. 4 Do you see that reference? 5 A. I see it. 6 Q. And the third bullet point 7 says: Opioid painkillers kill more than 8 cocaine and heroin combined. 9 Do you see that as well? 10 A. I see that. 11 Q. Okay. Do you know in what 12 context this information was presented, like 13 where it was presented? 14 A. It was an operations 15 conference. I don't recall if I was there or 16 not. I was not always invited to them, but I 17 could have been there. 18 Q. And then if we go to the next 19 page, page .4, it says DEA Focus is the title 20 of this slide. 21 Do you see where I'm at? 22 A. I see that. 23 Q. Okay. And it says -- you see 24 where it says, "DEA expects"? 25 A. I see it.</p>

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<p>1 form; misstates prior testimony.</p> <p>2 A. No.</p> <p>3 MR. EPPICH: Assumes facts not</p> <p>4 in evidence.</p> <p>5 A. No, I do not recall ever having</p> <p>6 any conversations of that nature.</p> <p>7 QUESTIONS BY MR. BOGLE:</p> <p>8 Q. Okay. I'm going to hand you</p> <p>9 what I'm marking as Exhibit 23, which is</p> <p>10 1.1804, and that's MCKMDL00543971.</p> <p>11 (McKesson-Hilliard Exhibit 23</p> <p>12 was marked for identification.)</p> <p>13 QUESTIONS BY MR. BOGLE:</p> <p>14 Q. There you go, sir.</p> <p>15 All right. Let's start at the</p> <p>16 last page of the document, .3. There's an</p> <p>17 e-mail at the bottom from you, October 23,</p> <p>18 2006, to a Sharon Mackarness.</p> <p>19 Do you see that?</p> <p>20 A. I see that.</p> <p>21 Q. Okay. There you say: McKesson</p> <p>22 will establish a monthly threshold of 10,000</p> <p>23 dosage forms of hydrocodone for all customers</p> <p>24 at each of its facilities. Customers</p> <p>25 requesting to purchase more than this amount</p>	<p>1 prior to any lost sales.</p> <p>2 Do you see that?</p> <p>3 A. I see that.</p> <p>4 Q. Okay. And do you see your</p> <p>5 response above in the second sentence in your</p> <p>6 next e-mail, and what is that?</p> <p>7 A. "I think JD's idea is good."</p> <p>8 Q. Okay. And that's the idea</p> <p>9 you're referencing, the one I just read</p> <p>10 about, right?</p> <p>11 A. The one stated in Sharon's</p> <p>12 e-mail, yes.</p> <p>13 Q. Right, okay. Which talks about</p> <p>14 being in the business to sell product and</p> <p>15 coming up with a threshold warning style</p> <p>16 report that would allow customers to justify</p> <p>17 an increase prior to McKesson losing sales,</p> <p>18 right?</p> <p>19 A. That's what's stated, yes.</p> <p>20 Q. Okay.</p> <p>21 MR. EPPICH: Are you at a good</p> <p>22 place to take another break?</p> <p>23 MR. BOGLE: Yeah, I was</p> <p>24 actually about to say the same thing.</p> <p>25 You read my mind.</p>
<p>1 will be required to provide additional</p> <p>2 information on its dispensing practices to</p> <p>3 justify amounts above this threshold. Such</p> <p>4 information will be reviewed by McKesson</p> <p>5 Regulatory Affairs before a customer will be</p> <p>6 authorized to purchase more than 10,000</p> <p>7 dosage forms per month. McKesson will also</p> <p>8 establish thresholds for other controlled</p> <p>9 substances purchases.</p> <p>10 Do you see that e-mail?</p> <p>11 A. I see that.</p> <p>12 Q. Okay. So then if you go to</p> <p>13 page .2, I'm looking at the e-mail from</p> <p>14 Sharon Mackarness back to you, October 26,</p> <p>15 2006, at 3:44 p.m.</p> <p>16 Do you see that?</p> <p>17 A. Yes, I see that.</p> <p>18 Q. Okay. The second paragraph she</p> <p>19 says to you: JB -- JD brought up a valid</p> <p>20 point in the meeting. We are in the business</p> <p>21 to sell product. If we could produce a</p> <p>22 report (you may already have one) that warned</p> <p>23 a customer's approach to the threshold, say</p> <p>24 at 85% of their 10,000 dosages, work could</p> <p>25 begin on justifying an increase in threshold</p>	<p>1 MR. EPPICH: Let's go ahead and</p> <p>2 go off the record.</p> <p>3 THE VIDEOGRAPHER: Off the</p> <p>4 record at 2:34.</p> <p>5 (Recess taken, 2:34 p.m. to</p> <p>6 2:50 p.m.)</p> <p>7 THE VIDEOGRAPHER: Stand by.</p> <p>8 The time is 2:50. Back on the record,</p> <p>9 beginning of File 5.</p> <p>10 QUESTIONS BY MR. BOGLE:</p> <p>11 Q. All right, Mr. Hilliard. You</p> <p>12 recall earlier in the deposition we talked</p> <p>13 about the PowerPoint that was presented by</p> <p>14 Mr. Mapes at the September 1, 2005 meeting</p> <p>15 with McKesson? Do you recall discussing that</p> <p>16 generally?</p> <p>17 A. Yes, I do.</p> <p>18 Q. Okay. If we can pull that back</p> <p>19 out, which I believe is Exhibit 4, and I want</p> <p>20 to go back to page .9. We talked about this</p> <p>21 a little bit before, but that bottom slide</p> <p>22 there titled Suspicious Orders, the last</p> <p>23 bullet point says: Report suspicious orders</p> <p>24 to DEA when discovered.</p> <p>25 Do you see that?</p>

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<p>1 There was some collaboration or 2 agreement that took place whereas we were 3 sending information directly to DEA based on, 4 I think, the agreement from 2008.</p> <p>5 Q. But if you go down to your 6 e-mail, your first e-mail response towards 7 the bottom of the first page, you 8 specifically say: If a transaction/order is 9 suspicious, we're not to fulfill the order, 10 thus nothing to transmit.</p> <p>11 Right?</p> <p>12 A. That was the discussion point.</p> <p>13 Q. Right. But that's exactly the 14 opposite of what Mr. Mapes told you 15 September 11, 2007, when he's saying 16 specifically to report suspicious orders. To 17 stop the order, to block the order, and 18 report it, right?</p> <p>19 MR. EPPICH: Objection.</p> <p>20 QUESTIONS BY MR. BOGLE:</p> <p>21 Q. You're saying here in the same 22 vein there would be nothing to transmit if 23 that happened.</p> <p>24 MR. EPPICH: Object to the 25 form. Misstates the document.</p>	<p>1 that development and discussions on how to 2 get there, and, again, I don't know what else 3 was communicated.</p> <p>4 QUESTIONS BY MR. BOGLE:</p> <p>5 Q. But when you go back to the top 6 e-mail that you wrote, you're actually 7 discussing the potential options of how you 8 might report a suspicious order, right?</p> <p>9 MR. EPPICH: Object to the 10 form.</p> <p>11 QUESTIONS BY MR. BOGLE:</p> <p>12 Q. How you would even do that.</p> <p>13 MR. EPPICH: Object to the 14 form. Misstates the document.</p> <p>15 A. Again, this is bouncing ideas 16 off of each other, coming up with development 17 on how these reports would work.</p> <p>18 QUESTIONS BY MR. BOGLE:</p> <p>19 Q. I guess my question is simply 20 that we've looked at three documents from 21 September 2005 to September 2007 where 22 members of the DEA are expressing that 23 suspicious orders need to be blocked and 24 reported when they are blocked.</p> <p>25 How could it be possible that</p>
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<p>1 A. This was developmental 2 discussions in regards to what -- what and 3 how things would populate on reports and 4 transmits, and I honestly don't recall the 5 specifics or the outcome of this other than 6 what we were discussing in this 7 communication.</p> <p>8 QUESTIONS BY MR. BOGLE:</p> <p>9 Q. Okay. But three -- more than 10 three years after this first presentation 11 from Mr. Mapes in September 2005, you guys 12 are now in August 2008 and you're still not 13 clear on how to report suspicious orders that 14 you didn't fill? That's what this indicates, 15 right?</p> <p>16 MR. EPPICH: Object to the 17 form. Calls for speculation, 18 misstates the document.</p> <p>19 A. I don't recall what all 20 additional conversations are outside of this 21 one e-mail communication. But again, this 22 was our work that we were trying to work 23 towards obtaining a better program, which was 24 a CSMP program.</p> <p>25 So this was just an element of</p>	<p>1 three years later you guys still don't know 2 how to do that?</p> <p>3 MR. EPPICH: Object to the 4 form. Misstates the document.</p> <p>5 Argumentative.</p> <p>6 A. The process was difficult. The 7 process took time. It took time to 8 implement, it took time for development.</p> <p>9 Again, this is just one piece 10 of that project review and trying to get to a 11 better program.</p> <p>12 QUESTIONS BY MR. BOGLE:</p> <p>13 Q. Was it so complicated that it 14 took more than three years to develop how to 15 report a suspicious order if it's been 16 blocked?</p> <p>17 MR. EPPICH: Objection to the 18 form; misstates the document, assumes 19 facts not in evidence.</p> <p>20 A. Again, it took time for the 21 development. We were working towards doing 22 the blocking of the transactions and this was 23 just part of that development process.</p> <p>24 QUESTIONS BY MR. BOGLE:</p> <p>25 Q. Okay. But, again, we looked at</p>

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<p>1 three documents; Exhibit 4, Exhibit 3, and 2 Exhibit 20, all where the DEA is saying make 3 a sales decision, block a sale, report 4 suspicious orders when they're blocked. Yet 5 we're looking now in August 2008 and you guys 6 still don't know how to do that, right?</p> <p>7 MR. EPPICH: Objection to the 8 form; misstates the document, assumes 9 facts not in evidence, and asked and 10 answered.</p> <p>11 A. It took us until the 12 implementation of the CSMP in order to get 13 our systems to where they could appropriately 14 conduct the blocking.</p> <p>15 QUESTIONS BY MR. BOGLE:</p> <p>16 Q. And the reporting, it appears 17 like, too, right? Because you're saying if 18 they block it, you thought in August 27, 2008 19 there would be nothing to transmit, no report 20 to make if you blocked it.</p> <p>21 MR. EPPICH: Object to the 22 form. Misstates the document.</p> <p>23 QUESTIONS BY MR. BOGLE:</p> <p>24 Q. Isn't that what you're saying 25 here?</p>	<p>1 form. 2 A. You read the e-mail. 3 QUESTIONS BY MR. BOGLE: 4 Q. Correctly, right? 5 MR. EPPICH: Objection to the 6 form. 7 A. You read the e-mail. 8 QUESTIONS BY MR. BOGLE: 9 Q. I'm just asking if you think I 10 read something wrong there. 11 A. Not that I'm aware of. 12 Q. Okay. And even after this 13 discussion in August 2008, there were 14 systematic failures at McKesson in reporting 15 suspicious orders, weren't there? 16 MR. EPPICH: Objection to the 17 form; calls for speculation, assumes 18 facts not in evidence. 19 A. Not that I recall. 20 QUESTIONS BY MR. BOGLE: 21 Q. Okay. All right. Let me hand 22 you what I'm marking as Exhibit 25. It's 23 1.1443. It's also MCKMDL00409453. 24 (McKesson-Hilliard Exhibit 25 25 was marked for identification.)</p>
<p style="text-align: center;">Page 299</p> <p>1 MR. EPPICH: Same objections. 2 A. I don't recall the context of 3 this document.</p> <p>4 QUESTIONS BY MR. BOGLE:</p> <p>5 Q. Okay. Well, I'm looking at 6 your own statement. I'm not asking you to 7 interpret anybody else's. You say, on 8 August 27, 2008, at 5:51 a.m.: If a 9 transaction/order is suspicious, we're not to 10 fulfill the order, thus nothing to transmit. 11 That's exactly what you said, 12 right?</p> <p>13 MR. EPPICH: Objection to the 14 form; argumentative, asked and 15 answered, misstates the document.</p> <p>16 QUESTIONS BY MR. BOGLE:</p> <p>17 Q. Did I read any of that 18 incorrectly?</p> <p>19 A. This was the discussion in 2008 20 10 years ago. I don't recall what all the 21 other discussions that were going on. This 22 was us working on the development process. 23 Q. My question was simply did I 24 read any portion of that sentence wrong? 25 MR. EPPICH: Objection to the</p>	<p style="text-align: center;">Page 301</p> <p>1 QUESTIONS BY MR. BOGLE: 2 Q. You see what I've got here is a 3 letter from November 4, 2014, from the U.S. 4 Department of Justice, Drug Enforcement 5 Administration. 6 Do you see that? 7 A. I see that. 8 Q. And it's to a Geoffrey Hobart 9 at Covington & Burling. 10 Do you see that being the 11 recipient? 12 A. I see that. 13 Q. And the re: line is 14 Registration Consequences for McKesson 15 Corporation for Violations of the Controlled 16 Substances Act. 17 Do you see that reference? 18 A. I see that. 19 Q. Okay. Let's take a look at a 20 couple of things here in the letter. If 21 you'd go to the second page, and I'm looking 22 at the third paragraph here where it says: 23 That having been said, we remain concerned 24 that McKesson fails to appreciate the serious 25 and systemic nature of the CSA-related</p>